

MINUTE ENTRY
GOODWIN, J.
FEBRUARY 22, 2013

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

**In re: C. R. Bard, Inc., Pelvic Repair System
Products Liability Litigation**

MDL No. 2187

**In re: American Medical Systems, Inc., Pelvic Repair System
Products Liability Litigation**

MDL No. 2325

**In re: Boston Scientific Corporation Pelvic Repair System
Products Liability Litigation**

MDL No. 2326

**In re: Ethicon Inc., Pelvic Repair System
Products Liability Litigation**

MDL No. 2327

THIS DOCUMENT RELATES TO ALL CASES

On February 7, 2013, the court conducted a status conference in the above-referenced MDLs. The following is a brief summary of the status conference:

I. General & Specific MDL Issues - Judge Goodwin

A. Ideas for expediting case movement

Henry Garrard presented alternative means for trying the bellwether cases, including trying multiple bellwether cases using multiple juries at one time. Judge Goodwin encouraged all counsel to think of ways to expedite the handling of these cases. He asked lead counsel for each of the defendants to have candid discussions with lead counsel for the plaintiffs. Judge Goodwin is very willing to try creative solutions to which all parties agree.

B. Report on state court dockets including hybrid cases with non MDL defendants

Clayton Clark provided a preliminary summary of cases pending in state courts across the country. There are approximately 3,500 to 4,000 such cases. Mr. Clark will

continue to update the list and, at the next status conference, will provide a more updated list highlighting those cases that are “of interest.” Barbara Binis, representing AMS, also provided a list of AMS cases in state courts throughout the country. Counsel for C. R. Bard, Richard North, stated that C. R. Bard is a co-defendant in a case set for trial against AMS in June 2013 in Texas. Judge Goodwin agreed to take the issue up again in March, if not sooner.

C. Discussion of multiple product restriction

Henry Garrard stated that in selecting potential bellwether cases in MDLs 2325, 2326 and 2327, the requirement that the parties must choose cases that are solely stress urinary incontinence (“SUI”) cases leaves out a significant number of women who have both an SUI tape and prolapse mesh that are manufactured by the same defendant. Mr. Garrard pointed out that of the five Bard bellwether cases, four have both an SUI product and a prolapse product, though plaintiffs are only prosecuting the prolapse product. Mr. Garrard asked that Judge Goodwin rethink the admonition that bellwether cases must be either SUI or pelvic organ prolapse (“POP”), but not both. Mr. Garrard stated that he would provide the court with statistics regarding multiple product cases.

Judge Goodwin explained that while he was still inclined to try single product cases, he would not rule out multiproduct cases. He asked that the plaintiffs gather statistics, confer with defendants and then, he would revisit the issue.

D. Plaintiff Fact Sheets in AMS, BSC and Ethicon

Mr. Garrard indicated that plaintiffs are willing to use the Bard plaintiffs’ fact sheet. Defendants have not yet had an opportunity to respond. Mr. Garrard stated that the parties would work towards agreement within a week.

E. Agenda Issues for MDL 2327 (Ethicon, Inc.)

1. New Jersey trial update by Ethicon

Donna Jacobs, counsel for Ethicon, Inc., reported that the trial in New Jersey before Judge Higbee was on day eighteen, and the plaintiffs had rested. Ms. Jacobs believed that the trial would be completed by the end of February.

Judge Goodwin stated that for bellwether trials in the MDLs assigned to him, when he was adequately informed, he would limit the number of trial days.

F. Agenda Issues for MDL 2326 (Boston Scientific Corporation)

1. Proxy Biomedical discovery update

At the last status conference, Judge Goodwin gave the parties fifty days to conduct jurisdictional discovery related to Proxy Biomedical. Mr. P.J.

Cosgrove, counsel for Proxy, reported that plaintiffs propounded extensive discovery, the parties had several meet and confer sessions and the deposition of a representative of Proxy Limited was noticed for today, but the notice was withdrawn and the deposition was terminated. Briefs are due in the Holizna case and on the motion to amend in the Boston Scientific MDL tomorrow. Proxy Limited filed its supplemental brief. Amy Wagstaff, counsel for plaintiffs in the Boston Scientific MDL, stated that she would file plaintiffs' brief tomorrow.

2. Motion to amend complaint

This matter has been covered in the previous section.

G. Agenda Issues for MDL 2187 (C. R. Bard, Inc.)

1. Status of trial preparation

Judge Goodwin had a brief meeting in chambers with counsel for Bard, and the parties had nothing additional to report.

II. General & MDL Specific Discovery Issues - Judge Stanley and Judge Eifert

A. Presentation of deposition protocols for AMS, BSC and Ethicon (AMS and BSC are agreed upon)

Judge Stanley and Judge Eifert conducted the remainder of the status conference. Mr. Garrard reported that the parties had reached agreement regarding deposition protocols. He presented the AMS and Boston Scientific deposition protocols to the court and stated that the Ethicon deposition protocol would be submitted by tomorrow.

B. Using documents marked confidential at time of production when necessary in relation to motions or responses to motions

Mr. Garrard discussed the challenges related to using confidential documents as exhibits.

C. Document preservation issues

Brian Aylstock, plaintiffs' counsel in the Ethicon MDL, reported that the parties in Ethicon are working on a document preservation order and hope to present something to the court in the next week. Also, document preservation orders may be presented in the other MDLs.

D. Treating and implanting physician scheduling and order of examination issues

Ms. Binis stated that this issue could be tabled for now.

E. Agenda Issues for MDL 2325 (American Medical Systems, Inc.)

1. Outside US production/compliance with PTO 24

Judge Stanley discussed with the parties, issues related to PTO 24, and a pending motion filed by plaintiffs. AMS's response will be due February 21, 2013. Plaintiffs' reply will be due in less than a week.

2. Document production in relation to depositions scheduled/custodial production

This topic also relates to a pending discovery motion that is not yet ripe. The parties agreed to continue to attempt to work out the issue. A response is due on February 21, 2013.

3. Document redaction issues

The parties reported they had worked out this issue.

4. Scope of document searches

Fidelma Fitzpatrick, counsel for the plaintiffs in the AMS MDL, reported a productive meet and confer on this issue that is ongoing.

5. Production of product exemplars

Ms. Fitzpatrick reported that the parties had reached a tentative agreement on this issue.

6. Status of Privilege Logs

Ms. Fitzpatrick reported that the parties had reached an agreement on this issue.

F. Agenda Issues for MDL 2327 (Ethicon, Inc.)

1. Foreign document production

Ms. Jacobs reported that the parties have a dispute regarding foreign document production, but that they are working through the issue.

2. Trial pool discovery agreement

Mr. Aylstock stated that the parties have discussed, at the invitation of defense counsel, narrowing the pool of cases that would be selected as bellwethers to those involving only certain products.

3. Status of search term modification request

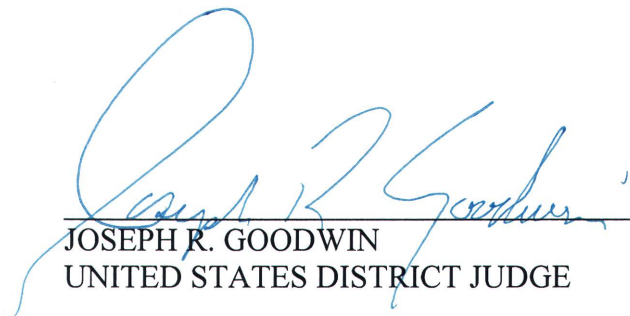
Mr. Aylstock indicated he believed this issue would be resolved.

4. Deposition scheduling

Mr. Aylstock indicated he believed this issued would be resolved.

III. Next Status Conference – March 21, 2013 at 10:00 a.m.

Please note that the next status conference will be conducted at **10:00 a.m.** on March 21, 2013.



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE